

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ARTHUR JACKSON #171107,

Plaintiff,

File No. 2:10-CV-96

v.

HON. ROBERT HOLMES BELL

GARY CAPELLO, et al.,

Defendants.

_____ /

**ORDER APPROVING AND ADOPTING
MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

On February 17, 2012, United States Magistrate Judge Timothy P. Greeley issued a report and recommendation (“R&R”) recommending that Defendant M. Comfort, M.D.’s motion for summary judgment be granted and that this case be dismissed in its entirety. (Dkt. No. 111, Mot.; Dkt. No. 121, R&R.) Plaintiff Jackson filed objections to the R&R and a memorandum on March 6, 2012. (Dkt. Nos. 122, 123.)

This Court is required to make a *de novo* determination of those portions of the R&R to which specific objection has been made, and may accept, reject, or modify any or all of the Magistrate Judge’s findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). “[A] general objection to a magistrate’s report, which fails to specify the issues of contention, does not satisfy the requirement that an objection be filed. The objections must be clear enough to enable the district court to discern those issues that are dispositive and

contentious.” *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995).

Plaintiff objects to the Magistrate Judge’s conclusion that Plaintiff’s allegations and supporting evidence are not sufficient to state an Eighth Amendment claim against Defendant Comfort for deliberate indifference to Plaintiff’s serious medical needs. Plaintiff contends that the Magistrate Judge failed to consider evidence that Plaintiff advised Dr. Comfort that he had experienced the same symptoms in the past, and was diagnosed with and successfully treated for *H. pylori*. Moreover, Plaintiff contends that the Magistrate Judge failed to consider evidence that after Plaintiff was transferred to a different prison, he was diagnosed with and successfully treated for *H. pylori*.

Contrary to Plaintiff’s assertions, the Magistrate Judge did not exclude or ignore Plaintiff’s evidence. The R&R specifically notes that Plaintiff had a positive result for *H. Pylori* in 2000. (R&R 2, 3.) Moreover, on *de novo* review, this Court agrees with the Magistrate Judge that because Plaintiff’s blood test was negative for *H. Pylori*, and because Plaintiff did receive medical care for his gastrointestinal condition consistent with that blood test, Plaintiff has at best shown a difference in judgment as to the appropriate medical diagnosis or negligence in diagnosing or treating a medical condition, neither of which is sufficient to state a valid claim of medical mistreatment under the Eighth Amendment. (R&R 6.)

To the extent Plaintiff has raised objections to the the dismissal of his claims against other Defendants, those objections are not timely. The Court granted the other Defendants’

motions for summary judgment by order dated September 29, 2011. (Dkt. No. 119).

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's objections to the R&R (Dkt. Nos. 122, 123) are **OVERRULED**.

IT IS FURTHER ORDERED that the February 17, 2012, R&R of the Magistrate Judge (Dkt. No. 121) is **APPROVED** and **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Defendant Comfort's motion to dismiss (Dkt. No. 111), treated as a motion for summary judgment, is **GRANTED**.

IT IS FURTHER ORDERED that Defendant Comfort's motion to strike (Dkt. No. 120) is **DENIED AS MOOT**.

Dated: March 14, 2012

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE